

BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

HARDIN & LOTT, APC

Ward J. Lott (State Bar #211307)

James B. Hardin (State Bar #205071)

4100 Newport Place, Suite 800

Newport Beach, CA 92660

Telephone: 949.667.4810

Facsimile: 949-706-6469

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARK WAGNER, an individual, on
behalf of himself, and on behalf of all
persons similarly situated,

Plaintiff,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA., a
Corporation,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200, *et seq.*; and,

2. VIOLATIONS OF THE
ELECTRONIC FUNDS TRANSFER
ACT ("EFTA"), 15 U.S.C. § 1693 *et seq.*

DEMAND FOR A JURY TRIAL

1 Plaintiff Mark Wagner ("PLAINTIFF"), an individual on behalf of himself and on behalf
2 of all persons similarly situated alleges the following on information on belief:
3

4 **INTRODUCTION**

5 1. This is a class action for unfair, unlawful and deceptive business practices in violation
6 of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), the
7 California Insurance Code, including, but not limited to, Cal. Ins. Code §§ 330-339 *et seq.*, and The
8 Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. § 1693 *et seq.* brought against Defendant
9 National Union Fire Insurance Company of Pittsburgh, PA. ("DEFENDANT").

10 2. PLAINTIFF brings this Class Action on behalf of himself and a California class,
11 defined as all California Residents who were solicited by DEFENDANT's direct marketing
12 telephone campaign targeting bank customers to sell them optional insurance and who were charged
13 for such insurance through a reoccurring charge on their bank account or bank-issued card (the
14 "CALIFORNIA CLASS") at any time during the period beginning on the date four (4) years prior
15 to the filing of this Complaint and ending on the date as determined by the Court (the
16 "CALIFORNIA CLASS PERIOD").

17 3. PLAINTIFF also brings this Class Action on behalf of himself and a nationwide class,
18 defined as all persons in the United States whose bank accounts were charged for DEFENDANT's
19 insurance products on a reoccurring basis without proper written authorization for such
20 preauthorized electronic fund transfers (the "EFTA CLASS") at any time during the period
21 beginning one (1) year prior to the filing of this Complaint and ending on the date as determined by
22 the Court (the "EFTA CLASS PERIOD").

23 4. This action is based on Defendant's business pattern and practice of unfairly,
24 unlawfully, and deceptively charging PLAINTIFF and all other CALIFORNIA CLASS and EFTA
25 CLASS Members for insurance they did not authorize, and for other misleading, unlawful and
26 fraudulent business practices as described herein.

27 ///

VENUE & JURISDICTION

5. This Court has original jurisdiction over this class action pursuant to 28 U.S.C. §§ 1331 and 15 U.S.C. § 1693m(g). This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 and the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2). The matter in controversy in this class action exceeds \$5,000,000.00 exclusive of interest and costs, and some members of the CALIFORNIA CLASS and EFTA CLASS are citizens of states other than the state in which DEFENDANT is incorporated and have their principal place of business. In addition, pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over PLAINTIFF's state law claims.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (i) DEFENDANT is subject to personal jurisdiction in this District and therefore resides in this District; (ii) DEFENDANT maintains offices and facilities in this District; and, (iii) DEFENDANT committed the wrongful conduct against members of the CALIFORNIA CLASS and EFTA CLASS, including PLAINTIFF in this District.

PARTIES

7. PLAINTIFF is an individual consumer who, at all times material hereto, was a resident of Orange County, California, and as detailed below was subject to the practices at issue in this County.

8. Defendant National Union Fire Insurance Company of Pittsburgh, PA. is a Corporation with its principal place of business in New York and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout the State of California.

9. DEFENDANT provides commercial and personal insurance solutions in the United States. DEFENDANT offers accident insurance solutions for business and individual customers. The company was founded in 1901. DEFENDANT operates as a subsidiary of AIG Property Casualty U.S., Inc.

THE CONDUCT

10. PLAINTIFF's and the CALIFORNIA CLASS and EFTA CLASS Members' claims arise from DEFENDANT's organized scheme to defraud consumers in order to increase revenues. DEFENDANT's employees and agents deceptively, fraudulently, and illegally charged consumers for insurance without obtaining their authorization. The scheme of adding unwanted insurance typically occurs after DEFENDANT's employees and/or agents are provided contact information and bank account and/or bank card information for PLAINTIFF and other CALIFORNIA CLASS and EFTA CLASS Members from banking institutions in which DEFENDANT has a relationship. Without PLAINTIFF's and other CALIFORNIA CLASS and EFTA CLASS Members' authorization, DEFENDANT then, without the consumers' knowledge, automatically deducts a monthly fee from PLAINTIFF's and other consumers' bank accounts and/or bank cards. DEFENDANT's scheme is based on charging consumers for insurance products en masse through a relationship with banking institutions that provide DEFENDANT with consumers' contact and bank account information without the consumers' knowledge. This scheme is deceptive, illegal and unfair conduct in violation of the Cal. Ins. Code §§ 330-339 *et seq.* and California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

11. Cal. Ins. Code §§ 330 states that "[n]eglect to communicate that which a party knows, and ought to communicate, is concealment." Further, Cal. Ins. Code §§ 331 states "[c]oncealment, whether intentional or unintentional, entitles the injured party to rescind insurance." Additionally, Cal. Ins. Code §§ 332 reads "[e]ach party to a contract of insurance shall communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract and as to which he makes no warranty, and which the other has not the means of ascertaining." Here, DEFENDANT's employees and/or agents concealed the true facts that the DEFENDANT has hidden knowledge of the consumers' bank account and/or bank card information and preauthorization from the banks to charge the consumers for insurance without the consumers' knowledge or authorization. DEFENDANT through its undisclosed relationships with banks, would target unsuspecting consumers based on prior knowledge of which consumers had bank accounts

1 with specific institutions and the account numbers. DEFENDANT would unbeknownst to the
2 consumers obtain the consumers' contact information through the banks along with the account
3 numbers and bank authorization to charge the accounts. After making direct telemarketing calls
4 from call centers to these bank customers, DEFENDANT after making contact would set up
5 unauthorized charges on the consumers; bank accounts through cryptic descriptions that
6 DEFENDANT knew would not be noticed by a large portion of the consumers targeted by
7 DEFENDANT's scheme. The monthly fee was typically a relatively small charge (\$24.90), and in
8 many cases DEFENDANT would get away with charging this unauthorized fee for years on
9 unsuspecting consumers via their bank accounts. This deceptive practice is highly misleading
10 because a reasonable consumer would assume that if they were going to be charged a reoccurring
11 charge on their bank account for insurance, (a) there would be a conspicuous charge on their account
12 rather than a cryptic description with a series of numbers and letters, (b) they would receive monthly
13 statements from the insurance company confirming payment, (c) they would be presented key
14 documents in advance including a written notice that such charges would ensue, evidence of their
15 written authorization to charge their bank account, and the terms and conditions of insurance, and,
16 (d) they would receive other indicia of a legitimate insurance transaction. No reasonable consumer
17 would expect their bank account to be accessed directly by DEFENDANT after a telemarketing call
18 from an insurance company without giving express permission to charge their bank account or even
19 providing DEFENDANT with their bank account information. Because a reasonable consumer
20 would never expect these bank account charges to ensue, they were at a very high risk for not
21 noticing such charges for a significant time period simply as a result of picking up the phone. Thus,
22 DEFENDANT would profit via its deceptive conduct. DEFENDANT knew all of these
23 circumstances in advance, knew that many other consumers had complained about these unfair
24 practices, and had even paid millions of dollars in penalties to state insurance agencies for similar
25 tactics in the past. Yet, DEFENDANT continued this unscrupulous conduct. DEFENDANT failed
26 to act in good faith and cheated the competition who followed the law.

27 12. In addition, DEFENDANT also violates The Electronic Funds Transfer Act ("EFTA"),
28

1 15 U.S.C. § 1693 *et seq.* by initiating electronic fund transfers without *written* authorization from
2 PLAINTIFF and other EFTA CLASS Members. The EFTA provides a basic framework
3 establishing, the rights, liabilities, and responsibilities of participants in electronic fund and
4 remittance transfer systems. 15 U.S.C. § 1693(b). The primary objective or goal of the EFTA is
5 the provision of individual consumer rights. 15 U.S.C. § 1693(b). The EFTA mandates that any
6 preauthorized electronic fund transfer must be “authorized by the consumer in *writing*.” 15 U.S.C.
7 § 1693e; see 12 C.F.R. § 205.10. Further, “a copy of such authorization shall be provided to the
8 consumer when made.” 15 U.S.C. § 1693e(a) The statute defines a preauthorized electronic fund
9 transfer as “an electronic fund transfer authorized in advance to recur at substantially regular
10 intervals” 15 U.S.C. § 1693a(9). An electronic fund transfer is “unauthorized” if it is a “transfer
11 from a consumer’s account initiated by a person other than the consumer without actual authority
12 to initiate such transfer and from which the consumer receives no benefit.” 15 U.S.C. § 1693a(11).
13 Section 1693m provides a cause of action against any person who fails to comply with Section
14 1693e with respect to any consumer. 15 U.S.C. §1693m(a).

15 13. Specifically as to PLAINTIFF, after reviewing his checking account records sometime
16 in 2017, PLAINTIFF noticed recurring monthly charges on his account labeled “Nuf Ipp Insr 800-
17 572-5848 8379 4813986200” for the same amount each month of \$24.90, the last unauthorized
18 charge occurring on February 2, 2017. After contacting his banking institution, Wells Fargo, in or
19 around March of 2017 regarding the unauthorized charges, PLAINTIFF was told that
20 DEFENDANT claimed to have permission to enroll PLAINTIFF in the insurance plan and deduct
21 a charge every month from his bank account since 2010. PLAINTIFF, however, never authorized
22 DEFENDANT to initiate the monthly electronic fund transfers for insurance that he did not use.
23 After PLAINTIFF’s banking institution completed their inquiry of the unauthorized charges,
24 PLAINTIFF’s bank credited his account in March of 2017, but would only do so for the sixty (60)
25 days preceding the unauthorized payments. PLAINTIFF was charged the monthly unauthorized
26 amount of \$24.90 by DEFENDANT for nearly *seven (7) years*. The amount was taken without any
27 authorization from PLAINTIFF. This conduct not only violates California’s Unfair Competition
28

1 Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* as DEFENDANT's conduct was unfair, unlawful and
2 deceptive, but DEFENDANT also violated the EFTA as any preauthorized electronic fund transfer
3 must be "authorized by the consumer in *writing*." 15 U.S.C. § 1693e; see 12 C.F.R. § 205.10.
4 PLAINTIFF never authorized DEFENDANT to charge him and transfer funds from his bank
5 account. The ill gotten gains received by DEFENDANT was achieved through deceptive, unfair
6 and unlawful acts that are part of DEFENDANT's business model for profit that has been ongoing
7 for years.

8 14. DEFENDANT and its parent companies have been the subject of considerable
9 litigation regarding the deceptive, unfair and unlawful practice described herein. Specifically,
10 DEFENDANT was sued by the Ohio Department of Insurance over its practice of enrolling
11 consumers in insurance products sold through DEFENDANT's direct marketing business unit to
12 customers of certain banking institutions. The Ohio Department of Insurance alleged that in certain
13 instances, coverage under policies that were filed, approved, issued and used as blanket
14 accident/sickness policies were marketed to individuals. The Ohio Department of Insurance alleged
15 that this practice constituted a violation of its laws concerning filing and approval of policies. On
16 October 15, 2012, the Ohio Department of Insurance and DEFENDANT entered into a regulatory
17 settlement agreement and DEFENDANT agreed to pay up to a maximum administrative penalty of
18 \$51,000,000.00. See Regulatory Settlement Agreement, available at,
19 [www.cbs.state.or.us/ins/admin_actions/actions_2012/insurer_2012/marketplace_2012/12-10-003-](http://www.cbs.state.or.us/ins/admin_actions/actions_2012/insurer_2012/marketplace_2012/12-10-003-rsa.pdf)
20 [rsa.pdf](http://www.cbs.state.or.us/ins/admin_actions/actions_2012/insurer_2012/marketplace_2012/12-10-003-rsa.pdf). The practices in which the above settlement challenged bears a striking resemblance to
21 DEFENDANT's deceptive practice alleged herein that directly marketed consumers who were
22 clients of certain banking institutions using the same scam tactics.

23 15. This small monthly amounts unlawfully charged to PLAINTIFF's and other
24 CALIFORNIA CLASS and EFTA CLASS Members' bank accounts and/or bank cards cleverly
25 concealed significant cash payments over a period of years from many consumers. DEFENDANT,
26 over at least the last six years, implemented a systematic scheme through which its employees and/or
27 agents unlawfully, unfairly, and deceptively charged PLAINTIFF and other CALIFORNIA CLASS
28

1 and EFTA CLASS Members for insurance that these consumers never authorized and initiated
2 electronic fund transfers from their bank accounts without their authorization. This is not an isolated
3 incident with one consumer, but a pattern of conduct that has occurred to numerous consumers
4 across the United States, which have been generally reported to their banking institutions and placed
5 on online review platforms. This practice has allowed DEFENDANT to pocket millions in
6 insurance premiums for unnecessary insurance coverage.

7 16. DEFENDANT is aware these practices are on-going and prevalent, as similar
8 complaints have been lodged on the internet regarding consumers being charged for insurance
9 products by DEFENDANT they never agreed to purchase. One individual on a message board for
10 online complaints entitled <http://800notes.com/Phone.aspx/1-800-572-5848> stated “[w]ell I think
11 I have it worst than any of you on this post. I too had got a call from 800-572-5848 (Adam) saying
12 they were some National Union Fire Insurance Co. affiliated with Wachovia Bank and offering a
13 million dollar policy. I asked to receive info on it and I did along with a gas voucher. I didn't feel
14 like I needed it and just threw it away. Little did I know if you don't tell them you don't want it in
15 30 dys. a charge of \$24.90 is automatically debited from your account every month. They activated
16 me an account and been taking money since Jan. 2010 and I had no idea since I hardly ever look at
17 my statements. I called several times and even wrote their corporate office about this and closing
18 my account. They lied and said it was handled and later more money was taken. These people are
19 running a scam!!! I never signed with them but they were allowed to take money straight from my
20 account.” Another poster to the same message board claimed “[a] few months ago, I was offered the
21 supplementary health insurance, in behalf of Wells Fargo, when in fact it's AIG or one of their
22 subsidiaries. The agreement was for me to review the document and cancel in 30 days if I decide
23 not to go about it. I did not receive any doc from AIG, and then received a charge of \$24.90 on my
24 account.” And yet another complainant stated “On receiving a statement indicating an unknown
25 charge we inquired by calling 800-572-5848 (in statement info). My wife had received a call
26 offering med insurance and implying Wells Fargo conn[e]ction. She requested written materials to
27 review, as that our policy is NOT to pu[r]chase anything online that we did originate! NO printed
28

1 info appeared! Apparently the written material req[ui]res a cancellation. An una[u]thorized charge
2 o[f] \$24.90 was made to our account. When we called it was claimed that the material was mailed
3 and a cancellation was not received. Could this be a commis[s]ion "skimming" scam inside the
4 telecaller business!!!”

5 17. The foregoing are but selected complaints in only one online forum, but the problem
6 is so pervasive that several other online boards with similar experiences exist. Another message
7 board on yelp at <https://www.yelp.com/biz/national-union-fire-insurance-pittsburgh> includes this
8 review from a consumer on 1/23/2017, “Scam. [DEFENDANT] has been taking money out of my
9 elderly parents account for almost 5 years. 3 small increments that they never noticed. I discovered
10 it today after helping them review their statement. A quick search of the internet will show you that
11 there are tons of complaints about the same issue.” Another Yelp reviewer had this to say on
12 5/18/2015, “[t]HIS IS A SCAM. I was getting a recurring charge of 19.90 on my bank statement
13 under NUF IPP INSR 800-572-5848. I never ask for it and the company said that they work with
14 Wells Fargo. There has been many State insurance departments that have filled claims against this
15 company.” Another person complained on 7/29/2013 “[w]ells Fargo had a charge on my credit cart
16 with the name Wells Fargo on it that I thought was the monthly fee for holding the credit card of
17 \$24.90 / mo. When I recently paid off and attempted to cancel my credit card, I was told this
18 monthly charge was actually an insurance plan from "Wells Fargo National Union Fire Insurance
19 Company" which was never authorized, needed or even used.”

20 18. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
21 CLASS and EFTA CLASS Members, DEFENDANT committed acts of unfair competition in
22 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
23 “UCL”), by engaging in an unlawful, deceptive and/or unfair practice that injured PLAINTIFF and
24 CALIFORNIA CLASS Members in amounts to be proven at trial. DEFENDANT must be ordered
25 to reimburse these amounts to PLAINTIFF and other CALIFORNIA CLASS and EFTA CLASS
26 Members. PLAINTIFF was personally victimized by DEFENDANT’s deceptive practice and lost
27 money as a result of the unauthorized electronic fund transfers from his bank account for insurance.
28

THE CALIFORNIA CLASS ALLEGATIONS

19. PLAINTIFF brings the First Cause of Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), on behalf of the CALIFORNIA CLASS as described above during the CALIFORNIA CLASS PERIOD as described above.

20. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the statute of limitations period should be adjusted accordingly.

21. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA CLASS Members is impracticable.

22. Common questions of law and fact exist as to members of the CALIFORNIA CLASS, including, but not limited, to the following:

- (a) Whether DEFENDANT charges CALIFORNIA CLASS Members for insurance products they never authorized;
- (b) Whether DEFENDANT falsely and deceptively conceals the fact that CALIFORNIA CLASS Members will be charged monthly for insurance products unless they affirmatively exclude themselves from DEFENDANT's automatic charge program;
- (c) Whether DEFENDANT had hidden knowledge of consumers' bank account and/or bank card numbers and concealed the automatic charges to CALIFORNIA CLASS Members bank accounts and/or bank cards;
- (d) Whether DEFENDANT acts and practices in connection with the sale of the insurance products or services detailed herein were deceptive trade practices within the meaning of the California Business & Professions Code, Section 17200, *et seq.*;
- (e) Whether DEFENDANT's acts and practices in connection with the promotion and sale of these products and/or services unjustly enrich DEFENDANT at the expense of, and to the detriment of, PLAINTIFF and other CALIFORNIA CLASS Members;

1 (f) Whether DEFENDANT's conduct as set forth herein injured consumers and,
2 if so, the extent of such injury; and,

3 (g) The proper form of injunctive and declaratory relief.

4 23. This Class Action meets the statutory prerequisites for the maintenance of a Class
5 Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

6 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that
7 the joinder of all such persons is impracticable and the disposition of their
8 claims as a class will benefit the parties and the Court;

9 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are raised
10 in this Complaint are common to the CALIFORNIA CLASS will apply
11 uniformly to every member of the CALIFORNIA CLASS;

12 (c) The claims of the representative PLAINTIFF are typical of the claims of each
13 member of the CALIFORNIA CLASS. PLAINTIFF and the members of the
14 CALIFORNIA CLASS were and are similarly or identically harmed by the
15 same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged
16 in by DEFENDANT; and,

17 (d) The representative PLAINTIFF will fairly and adequately represent and
18 protect the interest of the CALIFORNIA CLASS, and has retained counsel
19 who are competent and experienced in Class Action litigation. There are no
20 material conflicts between the claims of the representative PLAINTIFF and the
21 members of the CALIFORNIA CLASS that would make class certification
22 inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert
23 the claims of all persons in the CALIFORNIA CLASS.

24 24. In addition to meeting the statutory prerequisites to a Class Action, this Action is
25 properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

26 (a) Without class certification and determination of declaratory, statutory and
27 other legal questions within the class format, prosecution of separate actions
28

by individual members of the CALIFORNIA CLASS will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CLASS; and/or,
- 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

1 A. Inconsistent or varying adjudications with respect to individual
2 members of the CALIFORNIA CLASS, which would establish
3 incompatible standards of conduct for DEFENDANT; and/or,

4 B. Adjudications with respect to individual members of the
5 CALIFORNIA CLASS would as a practical matter be
6 dispositive of the interests of the other members not parties to
7 the adjudication or substantially impair or impede their ability
8 to protect their interests; and,

9 3) A Class Action is superior to other available methods for the fair and
10 efficient adjudication of this litigation because class treatment will
11 obviate the need for unduly and unnecessary duplicative litigation that
12 is likely to result in the absence of certification of this Action pursuant
13 to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

14 25. This Court should permit this Action to be maintained as a Class Action pursuant to
15 Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

16 (a) The questions of law and fact common to the CALIFORNIA CLASS
17 predominate over any question affecting only individual CALIFORNIA
18 CLASS Members because DEFENDANT's practices were uniform and
19 systematically applied with respect to the CALIFORNIA CLASS;

20 (b) The members of the CALIFORNIA CLASS are so numerous that it is
21 impractical to bring all members of the CALIFORNIA CLASS before the
22 Court;

23 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able
24 to obtain effective and economic legal redress unless the action is maintained
25 as a Class Action;

26 (e) There is a community of interest in obtaining appropriate legal and equitable
27 relief for the acts of statutory violations and other improprieties, and in
28

obtaining adequate compensation for the injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;

(f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;

(h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,

(i) Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

26. PLAINTIFF will seek leave to amend the Complaint to include any additional subject vehicles that are similarly situated when they have been identified.

THE EFTA CLASS ALLEGATIONS

27. PLAINTIFF brings the Second Cause of Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), on behalf of the EFTA CLASS as described above during the EFTA CLASS PERIOD as described above.

28. To the extent equitable tolling operates to toll claims by the EFTA CLASS against DEFENDANT, the EFTA CLASS PERIOD should be adjusted accordingly.

29. The EFTA CLASS is so numerous that joinder of all EFTA CLASS Members is impracticable.

30. DEFENDANT uniformly violated the rights of the EFTA CLASS by:

(a) Violating The Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. § 1693 *et seq.* As a result of Initiating electronic fund transfers without *written*

1 authorization from PLAINTIFF and other EFTA CLASS Members.
2 DEFENDANT did so intentionally, knowingly, and wilfully.

3 31. Common questions of law and fact exist as to members of the EFTA CLASS,
4 including, but not limited, to the following:

- 5 (a) Whether DEFENDANT charges EFTA CLASS Members for insurance
6 products they never authorized;
- 7 (b) Whether DEFENDANT falsely and deceptively concealed the fact that
8 DEFENDANT had the EFTA CLASS Members' bank account and/or bank
9 card number and had preauthorization from the bank to charge these accounts
10 and that EFTA CLASS Members will be charged monthly for insurance
11 products unless they affirmatively excluded themselves from DEFENDANT's
12 automatic charge program;
- 13 (c) Whether DEFENDANT acts and practices in connection with the sale of the
14 insurance products or services detailed herein were violations of The
15 Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. § 1693 *et seq.*;
- 16 (d) Whether DEFENDANT's conduct as set forth herein injured consumers and,
17 if so, the extent of such injury; and,
- 18 (e) The proper form of injunctive and declaratory relief.

19 32. This Class Action meets the statutory prerequisites for the maintenance of a Class
20 Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 21 (a) The persons who comprise the EFTA CLASS are so numerous that the joinder
22 of all such persons is impracticable and the disposition of their claims as a
23 class will benefit the parties and the Court;
- 24 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are raised
25 in this Complaint are common to the EFTA CLASS will apply uniformly to
26 every member of the EFTA CLASS;
- 27 (c) The claims of the representative PLAINTIFF are typical of the claims of each
28

1 member of the EFTA CLASS. PLAINTIFF and the members of the EFTA
2 CLASS were and are similarly or identically harmed by the same unlawful,
3 deceptive, unfair and pervasive pattern of misconduct engaged in by
4 DEFENDANT; and,

- 5 (d) The representative PLAINTIFF will fairly and adequately represent and
6 protect the interest of the EFTA CLASS, and has retained counsel who are
7 competent and experienced in Class Action litigation. There are no material
8 conflicts between the claims of the representative PLAINTIFF and the
9 members of the EFTA CLASS that would make class certification
10 inappropriate. Counsel for the EFTA CLASS will vigorously assert the claims
11 of all persons in the EFTA CLASS.

12 33. In addition to meeting the statutory prerequisites to a Class Action, this Action is
13 properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 14 (a) Without class certification and determination of declaratory, statutory and
15 other legal questions within the class format, prosecution of separate actions
16 by individual members of the EFTA CLASS will create the risk of:

- 17 1) Inconsistent or varying adjudications with respect to individual
18 members of the EFTA CLASS which would establish incompatible
19 standards of conduct for the parties opposing the EFTA CLASS;
20 and/or,
21 2) Adjudication with respect to individual members of the EFTA CLASS
22 which would as a practical matter be dispositive of interests of the other
23 members not party to the adjudication or substantially impair or impede
24 their ability to protect their interests.

- 25 (b) The parties opposing the EFTA CLASS have acted or refused to act on
26 grounds generally applicable to the CLASS, making appropriate class-wide
27 relief with respect to the EFTA CLASS as a whole;
28

1 (c) Common questions of law and fact exist as to the members of the EFTA
2 CLASS, with respect to the practices and violations of California law as listed
3 above, and predominate over any question affecting only individual EFTA
4 CLASS Members, and a Class Action is superior to other available methods
5 for the fair and efficient adjudication of the controversy, including
6 consideration of:

7 1) The interests of the members of the EFTA CLASS in individually
8 controlling the prosecution or defense of separate actions in that the
9 substantial expense of individual actions will be avoided to recover the
10 relatively small amount of economic losses sustained by the individual
11 EFTA CLASS Members when compared to the substantial expense and
12 burden of individual prosecution of this litigation;

13 2) Class certification will obviate the need for unduly duplicative litigation
14 that would create the risk of:

15 A. Inconsistent or varying adjudications with respect to individual
16 members of the EFTA CLASS, which would establish
17 incompatible standards of conduct for DEFENDANT; and/or,

18 B. Adjudications with respect to individual members of the EFTA
19 CLASS would as a practical matter be dispositive of the
20 interests of the other members not parties to the adjudication or
21 substantially impair or impede their ability to protect their
22 interests; and,

23 3) A Class Action is superior to other available methods for the fair and
24 efficient adjudication of this litigation because class treatment will
25 obviate the need for unduly and unnecessary duplicative litigation that
26 is likely to result in the absence of certification of this Action pursuant
27 to Fed. R. Civ. Proc. 23(b)(2) and/or (3).
28

1 34. This Court should permit this Action to be maintained as a Class Action pursuant to
2 Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

- 3 (a) The questions of law and fact common to the EFTA CLASS predominate over
4 any question affecting only individual EFTA CLASS Members because
5 DEFENDANT's practices were uniform and systematically applied with
6 respect to the EFTA CLASS;
- 7 (b) The members of the EFTA CLASS are so numerous that it is impractical to
8 bring all members of the EFTA CLASS before the Court;
- 9 (d) PLAINTIFF, and the other EFTA CLASS Members, will not be able to obtain
10 effective and economic legal redress unless the action is maintained as a Class
11 Action;
- 12 (e) There is a community of interest in obtaining appropriate legal and equitable
13 relief for the acts of statutory violations and other improprieties, and in
14 obtaining adequate compensation for the injuries which DEFENDANT's
15 actions have inflicted upon the EFTA CLASS;
- 16 (f) There is a community of interest in ensuring that the combined assets of
17 DEFENDANT are sufficient to adequately compensate the members of the
18 EFTA CLASS for the injuries sustained;
- 19 (g) DEFENDANT has acted or refused to act on grounds generally applicable to
20 the EFTA CLASS, thereby making final class-wide relief appropriate with
21 respect to the EFTA CLASS as a whole;
- 22 (h) The members of the EFTA CLASS are readily ascertainable from the business
23 records of DEFENDANT; and,
- 24 (i) Class treatment provides manageable judicial treatment calculated to bring an
25 efficient and rapid conclusion to all litigation of all claims arising out of the
26 conduct of DEFENDANT as to the members of the EFTA CLASS.

27 35. PLAINTIFF will seek leave to amend the Complaint to include any additional subject
28

vehicles that are similarly situated when they have been identified.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

36. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

37. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code § 17021.

38. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

39. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violated California law, including but not limited to, Cal. Ins. Code §§ 330-339 *et seq.* DEFENDANT’s conduct as described herein also violates The Electronic Funds Transfer Act (“EFTA”), 15 U.S.C. § 1693 *et seq.* for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld. The conduct violates many common law standards including conversion, as well as criminal statutes including Penal Code § 484(a). Further, the conduct violates the elements of California common law conversion.

1 40. By the conduct alleged herein, DEFENDANT's practices were unlawful, deceptive
2 and unfair in that these practices violated public policy, were immoral, unethical, oppressive,
3 unscrupulous or substantially injurious to consumers, and are without valid justification or utility
4 for which this Court should issue equitable and injunctive relief pursuant to Section 17203 of the
5 California Business & Professions Code, including restitution of monies wrongfully deducted from
6 consumers' bank accounts and/or bank cards. As described herein, DEFENDANT engaged in the
7 unfair and deceptive business practice of enrolling consumers in DEFENDANT's insurance program
8 and then concealing the fact that their bank accounts would be charged automatically each month
9 for insurance products.

10 41. DEFENDANT's business practices, as detailed above, are unethical, oppressive and
11 unscrupulous, and they violate fundamental policies of this State. Further any justifications for
12 DEFENDANT's wrongful conduct are outweighed by the adverse effects of such conduct. Thus,
13 DEFENDANT engaged in unfair business practices prohibited by the California Business &
14 Professions Code § 17200.

15 42. Section 17200 also prohibits any fraudulent business act or practice. DEFENDANT
16 violated this prong of the UCL by directing their employees and/or agents to disseminate misleading
17 and partial statements about DEFENDANT's insurance program that had a tendency to mislead
18 consumers. Further, DEFENDANT violated this prong of the UCL by concealing the fact that
19 consumers would be enrolled in DEFENDANT's insurance program that would automatically
20 deduct money from their bank account and/or bank card each month.

21 43. DEFENDANT's conduct caused and continues to cause substantial injury to
22 PLAINTIFF and other consumers. PLAINTIFF has suffered injury in fact and lost money as a result
23 of DEFENDANT's unfair, deceptive and unlawful conduct.

24 44 PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
25 do, seek such relief as may be necessary to restore to them the money and property which
26 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
27 CLASS have been deprived, by means of the above described unlawful and unfair business
28

1 practices.

2 45. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled
3 to, and do, seek a declaration that the described business practices are unlawful, unfair and
4 deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in
5 any unlawful and unfair business practices in the future.

6
7 **SECOND CAUSE OF ACTION**

8 **For Violations of the Electronic Funds Transfer Act**

9 **[15 U.S.C. § 1693 *et seq.*]**

10 **(By PLAINTIFF and the EFTA CLASS and Against All Defendants)**

11 46. PLAINTIFF, and the other members of the EFTA CLASS, reallege and incorporate
12 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

13 47. DEFENDANT violated the EFTA, specifically 15 U.S.C. § 1693a(11) by initiating
14 electronic fund transfers for unauthorized insurance products from the bank accounts fo PLAINTIFF
15 and other EFTA CLASS Members on a recurring basis, at substantially regular intervals, without
16 first obtaining knowing, written authorization from them. DEFENDANT further failed to present
17 the written authorization to EFTA Class Members when made as required by law, in furtherance of
18 its fraudulent scheme.

19 48. By initiating the electronic fund transfers with PLAINTIFF's and EFTA CLASS
20 Members' authorization, DEFENDANT violated and continues to violate 15 U.S.C. 1693e. As a
21 direct and proximate result of DEFENDANT's unlawful acts and conduct, PLAINTIFF and EFTA
22 CLASS Members were deprived of the use of their money that was charged and illegally transferred
23 from their bank account by DEFENDANT for DEFENDANT's sole benefit.

24 49. Pursuant to 15 U.S.C. § 1693m. PLAINTIFF, on behalf of himself and the EFTA
25 CLASS, seeks a Court order for actual and statutory damages to be determined by the Court,
26 injunctive relief, as well as reasonable attorneys' fees and the cost of thsi action.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein; and,
- C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On Behalf of the EFTA CLASS:

- A) That the Court certify the Second Cause of Action asserted by the EFTA CLASS as a class action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- B) For compensatory damages, including actual and statutory damages, arising from DEFENDANT's wrongful and illegal conduct; and,
- C) For an award of reasonable attorneys' fees and all costs and expenses incurred in the course of prosecuting this action.

3. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate; and,
- B) Such other and further relief as the Court deems just and equitable.

Dated: June 15, 2017

BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: June 15, 2017

BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

K:\D\Dropbox\Pending Litigation\Nationail Union Fire Insurance Company - Wagner\p-complaint-FINAL.wpd